GENERAL NO. 25809. FORM NO. 2

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IN THE

Supreme Court of the United States

October Term 1918.

AMERICAN STEEL FOUNDRIES,
Petitioner,

v.

THE TRI-CITY CENTRAL TRADES COUNCIL, et al.
Respondents.

SUPPLEMENTAL BRIEF FOR PETITIONER

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General No. 25809. Term No. 13.

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AMERICAN STEEL FOUNDRIES,
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vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, *et al.*,
Respondents.

Supplemental Brief for Petitioner.

I.

On the former oral argument counsel for petitioner shortly before the close of his argument was asked by one of the justices, if he had given consideration to the effect of the "CLAYTON ACT" upon the case. Counsel replied that he had not, that the question had not been raised either in the District Court or in the Circuit Court of Appeals nor in this Court. Counsel, however, proceeded to address himself to the inquiry when his time under the rules expired and further opportunity for reply was closed. In view of this occurrence, we assume that one of the reasons for re-argu-

ment was to permit the question as to the effect of the Clayton Act upon this case to be discussed by counsel, and we therefore at the moment address ourselves to that subject.

The final decree granting the Petitioner a permanent injunction was entered on the **9th day of June, 1914.**

The legislation known as the Clayton Act became law on **October 15, 1914.**

It will be noted that the rights of the Petitioner by final judgment and decree were definitely and formally fixed and vested **before the Clayton Act became law.**

Before discussing the Clayton Act and its general applicability to the facts and law of the case, we desire to present the point that no retroactive effect can be given to the Clayton Act so as to affect the final decree and judgment entered prior to its enactment.

This proceeding is not one involving a relationship between an individual and the federal government or the state government or the public as such, in any way whatsoever. It is a controversy between private parties, namely, the petitioner and the respondents. While it may be contended that legislation subsequent to adjudication in proceedings between public bodies or between an individual and the public, because each one doing business with the federal government or the state government is more or less subject to legislation affecting the relationship, no such rule can apply in a controversy or proceeding between private parties.

This court passed upon that question in the case of the **State of Pennsylvania v. Wheeling & Belmont Bridge Co.,** 59 U. S. 421. The Court says at page 431:

> "Now, we agree, if the remedy in this case had been an action at law, and a judgment rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach and the power of Congress. It would have depended, not upon the public right of free navigation of the river but upon the judgment of the Court. The decree before us so far as it respect the costs adjudged stands upon the same principles and is unaffected by the subsequent law."

That case involved, as the court will note, matters relating to a public improvement constructed and maintained under acts of Congress and therefore involved a controversy between an individual and the federal government, and in that respect differs from the instant case; and yet, even in that case, the Court said at page 431:

> "But it is urged, that the act of Congress cannot have the effect and operation to annul the judgment of the Court already rendered, or the rights determined thereby in favor of the plaintiff. This, as a general proposition, is certainly not to be denied, **especially as it respects private rights of parties. When they have passed into judgment the right becomes absolute, and it is the duty of the Court to enforce it."**

In the dissenting opinion of Mr. Justice Grier is the following at page 449:

> "I concur with my brother MacLean that Congress cannot annul or vacate any decree of this Court; that the assumption of such power is without precedent, and as a precedent for the future it is a dangerous example."

A final judgment or decree is property just as much as any other form of property. The right

of property and the protection thereof is a vested estate and such judgment or decree should not be subject to subsequent legislation, especially if such legislation involves not only remedies but rights. In this case both are involved.

Suppose there had been no appeal from the final decree in this case and a violation of the permanent injunction had occurred and the defendants charged with such violation were brought to the bar of the Court for contempt, could defendants so charged relieve themselves by pleading in defense the subsequent enactment of the Clayton Act? Can Congress affect or stay the enforcement of a subsisting order, injunction or decree of a Court having jurisdiction of the parties and the subject matter? And, indeed, as applied to the case at bar, can Congress affect the subsisting order, judgment or decree of a Court of competent jurisdiction, having jurisdiction of the persons and subject matter in a suit involving the construction and application of the statutes of the State of Illinois?

Besides, there is nothing in the Clayton Act making the provisions thereof operative retrospectively. Not only is there a presumption that the law was to become operative prospectively but to have it otherwise would require a clear and unmistakable expression of legislative intention to that effect. There is nothing in the Clayton Act to warrant the application or operation thereof, other than prospectively.

In the case of **Memphis v. United States,** 97 U. S. 293, this Court said at page 296:

> "In this case the relator recovered his judgment against the city on the 16th of March, 1875. Into that judgment his contract was merged, and it no longer had any legal ex-

istence. If, as asserted by Blackstone, the judgment was itself a contract, the remedies for its enforcement, existing at the time when it was recovered, could not be taken away either by direct legislation, or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislative invasion."

and on page 298 this Court quoting **Fisher's Negroes v. Dabbs** (6 Yerg. (Tenn.) 119), said:

> "A distinction between the right and the remedy is made and exists. But where the remedy has attached itself to the right, and is being prosecuted by due course of law, to separate between them and take away the remedy is to do violence to the right, and comes within the reason of that provision of our Constitution which prohibits retrospective, or, in other words, retroactive, laws from being passed, or laws impairing the obligation of contracts."

In the case of **Livingston v. Livingston,** 173 N. Y. 377, the New York Court of Appeals involving a similar question said, at page 381:

> "By the decree, in this action, the obligation, before resting upon the husband for the support and education of the children and for the support of his wife, was changed. It, thereafter, was made to rest upon the wife and the decree adjudged that the husband should pay to her a certain fixed sum of money in a certain manner, in lieu of his previous obligation. The judgment defined and created a new obligation on his part and as the amendment of the statute, necessarily, affected the wife's right to compel exact performance and bore upon the obligation, to her possible injury, it was obnoxious to the constitutional

prohibition. It would be absurd to call it remedial, as affecting merely a remedy upon the decree. Even then, it would violate a substantial right of the plaintiff. It was, however, in fact, the impairment of, or interference with a vested right conferred by a final judgment. The plaintiff's protection in the enjoyment of her right under the decree is not, necessarily, referable to the prohibition in the Federal Constitution against the impairment of the obligations of contracts. It is not at all necessary, for the plaintiff's purposes, that the judgment of divorce should be deemed a contract. A judgment is not a contract, in the ordinary sense of an agreement reached between persons, to whose terms their mutual assent has been given, and it is in that sense that the word is used in the Federal Constitution. **(State of Louisiana v. Mayor of New Orleans,** 109 U. S. 285.) A judgment creates an obligation of the highest nature known to the law and it is enforceable against the judgment debtor as upon his promise to perform it; but that promise is only implied by law. The obligation is imposed; it is not assumed voluntarily. But a final judgment creates and vests substantial rights, and, if the statute were allowed this retroactive effect, a new stipulation would be imported into it, in effect, that the defendant's obligation might be changed upon showing subsequently occurring facts."

In the case of **Humphrey v. Gerard,** 83 Conn. 346, the Court said at page 352:

"The most apparent answer to this contention is found in the fact that the statute is not a retrospective one. The presumption is that statutes are intended to operate prospectively. They should never be construed as having a retrospective effect unless their terms show clearly and unmistakably a legislative intention that they should so operate."

Further cases of similar import are:

Strafford v. Sharon, 61 Vt. 126.
Merchants Bank v. Ballou, 98 Va. 112.
Mills v. Charlton, 29 Wisc. 400.
Miller v. Jackson, 78 Ind. 503.

II.

We insist that the Clayton Act for other reasons must be held to be inapplicable and ineffective.

The Clayton Act cannot be made applicable to the instant case. **This is not a case involving or growing out of a dispute concerning terms or conditions of employment (a) between employer and employees, (b) or between employers and employees, (c) or between employees (d) or between persons employed and persons seeking employment.**

There was no strike at this plant instituted by the employees or with the authority of the employees.

There was no controversy or dispute between the petitioner and its employees. See testimony of Walcher, printed record, page 25: **"From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employes with regard to wages."**

Only two of the employees left the employ of the petitioner and neither because of any strike of the employees.

Churchill was one of the employees who left. He testified, printed Record, page 53:

> "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had

to take at the time being and I haven't had anything better since. I didn't get a better job. **I quit because these fellows asked me to go out."**

Cook, the other employee, leaving his employment, testified at page 56 of the Printed Record:

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up. * * * I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, **and I quit because they said there was a strike on."**

No other employee out of the entire body of workmen left their employment.

The strike at the plant of petitioner was instigated by the respondent, the Tri-City Central Trades Council, an utter stranger to the petitioner, as disclosed by the strike notice in the form of a hand-bill as follows:

"UNION MEN AND ALL LABOR STAY AWAY FROM THE AMERICAN STEEL FOUNDRY, GRANITE CITY, ILL., ALL TRADES ARE ON STRIKE

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means
COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL,
Endorsed by Tri-City Trades Council."

This organization did not act or speak for the employees of the petitioner, nor had it authority to act for them nor was the strike instigated by this organization subsequently approved by the employees of petitioner. On the contrary the Tri-City Central Trades Council through its officers and agents, a stranger both to the petitioner and its employees, sought to force the employees to violate their contracts and leave the employ of the petitioner, by arbitrarily instigating and wantonly prosecuting an unauthorized, illegal, brutal and criminal strike. See testimony of Walcher, Printed Record, page 41:

> "Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organizations; **I asked him if the Committee represented our employees and he said they did not,** and I told him we didn't recognize any labor organizations; we had never had any complaints or demands from any of our employees."

Earl Galloway, President of the Tri-City Central Trades Council testified, Printed Record, Page 44:

> "As Chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of, that none of his employees had said anything to him that they were dissatisfied; **he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions;** he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if

that was the way he felt about it I would have to report the same back."

This was about the 20th or 21st of April. **It was reported back to the joint board and a strike was declared on the plant.** Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

III.

Section 20 of the Clayton Act is further inapplicable to the instant case because of the facts disclosed in the record conclusively establishing that an injunction was necessary to prevent irreparable injury to property or to a property right of the petitioner and for which injury there was no adequate remedy at law.

The purpose of the strike instigated by the Tri-City Central Trades Council is indicated in the testimony of the defendant Cook at page 56 of the Printed Record as follows:

> **"I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the men not to take the places of the strikers the Company would restore the wages. I was trying to make them restore the wages or close down the plant."**

A further indication of the purpose of this strike is disclosed in the brief of counsel for the respondent in answer to the petition for **certiorari** at page 35 as follows:

> **"And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is."**

A further indication of the purpose of the strike

is disclosed in the testimony of Mr. Walcher at page 30 of the Printed Record as follows:

> **"As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end."**

and again at page 30:

> **"I was told a statement had been made that the plant was going to be burnt.** The plant is of various construction, some combustible and some non-combustible. The frame of the plant is wood in a great many cases, and one of the large buildings is an entire wood building."

On the trial no denial was made of the threat to destroy and burn the works of petitioner, either by any of the respondents, or by the witnesses testifying for respondents.

Of course the provisions of the second paragraph of Section 20 have relation only to the kind of cases and situations cognizable under the first paragraph. This case not coming within the provisions of the first paragraph of Section 20 is therefore not subject to the admonitory inhibitions against the issuing of a restraining order or injunction set forth in the second paragraph.

IV.

It is believed this Court has already decided, that Section 20 of the Clayton Act is not applicable to cases such as the instant case. In the report of the case of **Paine Lumber Co. v. Neal, 244 U. S. 459,** the contentions and arguments of counsel for the respective parties disclose, that, the ap-

plication of Section 20 of the Clayton Act was urged and resisted by respective counsel. The dissenting opinion of Mr. Justice Pitney, concurred in by Mr. Justice McKenna and Mr. Justice Vandeventer goes very fully into that question at pages 480 *et seq.* and we quote liberally from pages 483 *et seq.*:

"The suggestion, in behalf of defendants, that Section 6 of the Clayton Act establishes a policy inconsistent with relief by injunction in such a case as the present, by making legitimate any acts or practices of labor organizations or their members that were unlawful before, is wholly inadmissible. The section prohibits restraining members of such organization from **"lawfully** carrying out the **legitimate** objects thereof". What these are, is indicated by the qualifying words: "instituted for the purposes of mutual help, and not having capital stock or conducted for profit". But these are protected only when "lawfully carried out". The section safeguards these organizations while pursuing their **legitimate** objects by lawful means, and prevents them from being considered, merely because organized, to be illegal combinations or conspiracies in restraint of trade. The section, fairly construed, has no other or further intent or meaning. A reference to the legislative history of the measure confirms this view. House Rep. No. 627, 63d Cong. 2d sess., pp. 2, 14-16; Senate Rep. No. 698, 63d Cong. 2d sess, pp. 1, 10, 46. **Neither in the language of the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted for accomplishing them.**

It is altogether fallacious, I think, to say that what is being done by the present defendants is

done only for the purpose of strengthening the union. Conceding this purpose to be lawful, it does not justify or excuse the resort to unlawful measures for its accomplishment. **A member of a labor union may refuse to work with non-union" "men, but this does not entitle him to threaten manufacturers for whom he is not working, and with whom he has no concern, with loss of trade and a closing of the channels of interstate commerce against their products if they do not conduct their business in a manner satisfactory to him.**

And the suggestion that, before the Clayton Act, unlawful practices of this kind were usually and notoriously resorted to by labor unions, and that for this reason Congress must have intended to describe them as "legitimate objects", and thus render lawful what before was unlawful, is a libel upon the labor organizations and a serious impeachment of Congress.

Nor can I find in Section 20 of the Clayton Act anything interfering with the right of complainants to an injunction. It refers only to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment". These words evidently relate to suits arising from strikes and similar controversies, and the committee reports upon the bill bear out this view of the scope of the section. But this is not such a suit. There is no relation of employer and employee, either present or prospective, between the parties in this case. Defendants who are employees are in one branch of industry in New York City; complainants are employers of labor in another branch of industry in distant

States. Nor is there any dispute between them concerning terms or conditions of employment. Section 20 prohibits an injunction restraining any person "from ceasing to patronize or to employ" "any party to **such dispute,** or from recommending, advising, or persuading others by **peaceful and lawful** means so to do; * * * or from peaceably assembling **in a lawful manner, and for lawful purposes;** or from doing any act or thing **which might lawfully be done in the absence of such dispute** by any party thereto."

Clearly, this provision is limited to the participants in a dispute of the character just indicated. And, quite as clearly, only "lawful" measures are sanctioned—that is, of course, measures that were lawful before the act. There is no grant, in terms or by necessary inference, of immunity in favor of a boycott of traders in interstate commerce, violative of the provisions of the Sherman Act, to which the Clayton Act is supplemental." (Emphasizing ours.)

In the opinion of Mr. Justice Holmes written for the majority of the Court he says on this subject at page 471:

> "Personally I lay those questions on one side because, while the Act of October 15, 1914, c. 323, Par. 16, 38 Stat. 730, 737, establishes the right of private parties to an injunction in proper cases, in my opinion it also establishes a policy inconsistent with the granting of one here. **I do not go into the reasoning that satisfied me because upon this point I am in a minority."** (Emphasizing ours.)

From this expression it is clear that upon this particular question the majority of the Court con-

curs in the views expressed in the dissenting opinion of Mr. Justice Pitney.

Under the decision in **Paine Lumber Co. v. Neal** *supra*, this Court also held in substantially the following language, the Clayton Act is not applicable here because the Clayton Act could not be given a retrospective effect to the new statute for the relief granted operates only **in futuro.**

That to give retrospective effect to the Clayton Act would establish a policy inconsistent with relief by injunctions in such a case as the present by making legitimate any acts or practices of labor organizations or their members that were unlawful before which would be wholly inadmissible. That there is no indication of a purpose on the part of Congress in the enactment of the Clayton Act to render lawful or legitimate anything that before the act was unlawful whether in the objects of such organization or its members or in the measures adopted for accomplishing them, and that the suggestion that before the Clayton Act unlawful practices of the kind disclosed in this record and which were usually and notoriously resorted to by labor unions and that for this reason Congress must have intended to describe them as 'legitimate objects' and thus render lawful what before was unlawful, is a libel upon the labor organizations and a serious impeachment of Congress, and that the Clayton Act interfering with the right of complainants to an injunction refers only to cases "between employer and employees or between employers and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment."

We believe that the case at bar comes within the rulings of this Court in **Eagle Glass & Mfg. Co. v. Rowe,** 245 U. S. 275 and **Hitchman Coal & Coke Co. v. Mitchell** *Ibid,* 232.

It is not disclosed in the reports of these cases whether or not the applicability of the Clayton Act was presented to or urged upon the Court. It is fairly inferable, however, that such was the case. It would seem hardly possible that in a case so fully argued as **Hitchman v. Mitchell,** supra, the Clayton Act and its effect upon the case were not considered, especially since this Court had so fully considered the application thereof to similar facts. **Paine Lumber Co. v. Neal,** *supra,* argued and decided before the decisions in **Hitchman v. Mitchell,** *supra,* and **Eagle Glass & Mfg. Co. v. Rowe,** *supra.* Indeed, the following expression appears in the opinion of Mr. Justice Pitney in the **Hitchman** case at page ——: "Needless to say there is no act of legislation to which defendants may resort for justification," as referred to in the case of **Montgomery v. Pacific Railway Co.,** 258 Fed. Rep., page 389.

Of course it is altogether possible in view of the decision in the **Paine Lumber Co. v. Neal,** *supra,* that the Clayton Act could have **no retrospective effect,** it was deemed inapplicable to those cases, and for the same reason it would be inapplicable to the instant case.

The effect of the Clayton Act upon cases arising out of "strikes" has been considered in a number of instances in the federal courts and notably in the following cases:

Stephens v. Ohio State Telephone Co., 240 Fed. Rep. 759. See pages 769, et seq. And having reference to what may fairly be defined as "peaceful" and "lawful" action, the Court submitted the following inquiries:

"What constitutes peaceful picketing may be answered by any fair-minded man, if this question is asked, 'Would this be lawful if no strike existed?'

"We accept this as a very good test and apply it to the concrete questions of fact arising in this case, as propounded in the several informations, with conclusions certain to come to every 'fair-minded man.' **Suppose no strike were in progress—**

"Would it be lawful for one or more men to use offensive, abusive, insulting or threatening language to another or others—for one to call another a 'rat,' a 'scab,' a 'thief,' an 'outcast' or by any other name commonly accepted as offensive or degrading or calculated to provoke the other to break the peace in resentment?

"Would it be lawful for one man or more to take station adjacent to the place of rent, lodging, or work of another or others, and there, by gesture, language, or otherwise, convey to the other insult or threat?

"Would it be lawful for one or more men to force his or their talk upon the unwilling ear of another—to compel him to listen against his will?

"Would it be lawful for one man or more to persistently follow another to and from his work, to his home or lodging and about the city, forcing upon him unwillingly their presence, without occasion other than to unmistakably suggest to him their hostility unless he meets their views?

"Would it be lawful for one to photograph another against his will, especially under circumstances which indicate unfriendliness to be the spirit, and a hostile use of the photograph to be the object?

"Would it be lawful to slink upon an unsuspecting man, inoffensively gazing into a shop window, and deal him a blow—to step from the hiding of an alley to trip a lady, and

then to strike her escort as he stoops to her assistance?

"These questions are formulated upon the testimony produced in open court, because of which attachments were issued under the law, resulting in the filing of informations against which counsel for respondents has presented the motions we are considering."

Lawlessness, intimidation and brutality, under the guise of "peaceful picketing", and sought to be defended and exonerated by counsel for respondents were much stronger in the case at bar than those disclosed in the inquiries propounded in the opinion in **Stephens v. Ohio State Telephone Co.,** *supra.*

Also in **Duplex Printing Press Co. v. Deering, et al.,** 252 Federal Rep. at page 722 where the subject is exhaustively and we believe persuasively treated in the opinion of Justice Rogers who announced the decision of the case. His opinion, however, was the minority opinion. Judge Hough, speaking for the majority in making reference to the effect and application of Section 20 of the Clayton Act says at page 747:

"The solution of the puzzle raised by a statute so blindly drawn as this one is not easy, and the intimation as to the present division of the Supreme Court on the subject, given (purely obiter) in Paine etc. Co. *v.* Neal 244 U. S. 459, 37 Sup. Ct. 718, 61 L. Ed. 1256, merely adds embarrassment. There is no ruling decision on the subject, and prognosis as to the probable disposition of the matter in a higher court, based on anything as yet published in the United States Reports, would be both unprofitable and improper. It is necessary to form opinion as upon new matter."

Judge Hough either disregarded or failed to

note the statement of Mr. Justice Holmes upon this subject in **Paine Lumber Co. v. Neal** at p. 471:

> "Personally I lay those questions on one side because, while the Act of October 15, 1914, c. 323, Par. 16, 38 Stat. 730, 737, establishes the right of private parties to an injunction in proper cases, in my opinion it also establishes a policy inconsistent with the granting of one here. **I do not go into the reasoning that satisfies me because upon this point I am in a minority."**

Also in the case of **Montgomery v. Pacific Electric Railway Co.,** 258 Fed. Rep. 382. We ask the Court's attention to the language of the opinion at page 388, etc., seq. The Court says, p. 389 as follows:

> "That the order here appealed from accords with the decision in the case cited is expressly conceded in the brief for the appellants, where it is declared that—
>
> "The injunction approved by the Supreme Court in the Hitchman Case does the same violence to the provisions of the Clayton Act as does the order at bar."

And again:

> "Certain it is that the provisions of the Clayton Act and the decision in the Hitchman case cannot be reconciled."
>
> "Nor is it true that the Supreme Court made in the case cited no reference to the Clayton Act; for, notwithstanding the fact that that act was pressed upon its consideration, the court, in the course of its elaborate opinion, expressly declared it 'needless to say there is no act of legislation to which defendants may resort for justification.' "

The latest case is **Dail-Overland Co. v. Willis**

Overland, 263 Fed. Rep. (Advance Sheets May 6, 1920) 171. The Court says at Page 185:

> "Complainant is not here seeking relief upon the same grounds which the Overland might occupy should it appeal to a court. Unless the law was modified by the passage of the so-called Clayton Act (Act Oct. 15, 1914, c. 323, 38 Stat. 730), it must be held that the complaint states a cause of action of conspiracy, reprehended by the Sherman Act of July 2, 1890, c. 647 (Comp. St. Sec. 8820 et seq.) under the authority of Loewe *v.* Lawlor, 208 U. S. 274 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Gompers *v.* Buck's Stove & Range Co., 221 U. S. 418, 31 Sup. Ct. 492, 55 L. Ed. 797, 34 L. R. A. (N. S.) 874. On page 438 of the latter decision (31 Sup. Ct. 497 [55 L. Ed. 797, 34 L. R. A. (N. S.) 874]) the Court says:
>
> "'The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman Anti-Trust Act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent. * * * But the very fact that it is lawful to form these bodies [labor organizations], with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution, or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government

to protect the one against the many, as well as the many against the one.'

"The acts charged against the alleged coconspirators in this case to have been in contemplation as agencies to effect the conspiracy, and also committed to further that conspiracy, were morally much more reprehensible than those charged against the alleged conspirators in the cases cited; **also in the present case the labor defendants are charged with conspiring to induce the employees of the Overland to break their contracts with the latter.** Consequently the case is within the scope of Hitchman Coal Co. *v.* Mitchell, and Eagle Glass & Mfg. Co. *v.* Rowe, reported in 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, and 245 U. S. 273, 38 Sup. Ct. 80, 62 L. Ed. 286, respectively.

"Does the Clayton Act change the law in any way, so as to affect the application here of the cases above cited? We are unable to see that it does, for we see nothing in this case that brings into pertinency the statement with which section 6 of that act (Comp. St. Sec. 8835f) begins, 'that the labor of a human being is not a commodity or article of commerce'; nor are the other provisions of section 6 applicable here. We are not asked here 'to restrain individual members of such organizations [labor organizations and others named] from **lawfully** carrying out the **legitimate objects thereof,** nor are we asked to declare the labor organizations named as defendants in this case 'to be illegal combinations of conspiracies in restraint of trade.' The things which the labor defendants are alleged to have in mind to accomplish the purposes of their alleged conspiracy, and the things which are alleged to have been done in furtherance of that conspiracy by way of overt acts, cannot, by the wildest stretch of imagination, be considered to be 'lawfully

> carrying out the legitimate object' of such organizations. Intimidation, violence, bloodshed, cannot be said to be lawful means to the effecting of legitimate objects of a labor organization, nor can it be said that the acts alleged to have been in contemplation and to have been put in practice as agencies of the alleged conspiracy were remotely within the privileges of peacefully persuading and lawfully assembling accorded to persons engaged in a labor controversy by section 20 of the Clayton Act (Comp. St. Sec. 1243d)."

It was proved beyond peradventure that the property and plant of petitioner were being injured and were imperilled by the acts of the respondents. Section 20 of the Clayton Act not only eliminates from its operation actions for injunction to prevent irreparable injury to property, but also to property rights. The opportunity and the right to carry on and conduct business is an established right and is a valuable property right. Interference with and invasion of this right legally pursued can be restrained even under the express language of Section 20 of the Clayton Act.

To carry on and operate its business, petitioner required as shown by the record the services and labor of workers. The petitioner had the legal right to the enjoyment of the work and activities of the men employed by it, and any interference therewith was an illegal interference and was subject to injunction. The effort of the respondents by "striking" the plant of the petitioner, forcing its employees to leave their work and its service and the interference with the employees, were an illegal effort to secure the violation of the employment contract between the petitioner

and its employees, were injurious to the business and the property and the property rights of the petitioner and subject to injunction.

It is not necessary there should be or that there should be proved, time contracts between the petitioner and its employees. Employment at will is sufficient. The petitioner is legally entitled to the employment of his employees under employment contracts at will and to the good-will resulting therefrom. This was decided by this court in the **Hitchman case,** *supra.* This court said in that case at page 251:

> "Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employees, with the free assent of the latter, is entitled to be protected in the enjoyment of the resulting status, as in any other legal right. That the employment was 'at will,' and terminable by either party at any time, is of no consequence. In **Traux v. Raich,** 239 U. S. 33, 38, this court ruled upon the precise question as follows: 'It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will.' (Citing many cases.)
>
> "In short, plaintiff was and is entitled to the good will of its employees, precisely as a merchant is entitled to the good will of his

customers although they are under no obligation to continue to deal with him. The value of the relation lies in the reasonable probability that by properly treating its employees, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations. See **Brennan v. United Hatters** (cited with approval in **Traux v. Raich,** *supra*), 73 N. J. L. 729, 749; **Brown v. Honiss,** 74 N. J. L. 501, 514 *et seq.*; **Jersey City Printing Co. v. Cassidy,** 63 N. J. Eq. 759, 767; **Walker v. Cronin,** 107 Massachusetts, 555, 565-566; **Moran v. Dunphy,** 177 Massachusetts, 485, and cases there cited; **L. D. Wilcutt & Sons Co. v. Driscoll,** 200 Massachusetts, 110, 117, etc."

We insist under the facts of this case the Clayton Act especially under the rulings of this Court, can in no way affect the right of the petitioner to maintain the permanent injunction awarded to it in the final decree entered in this case by the District Court.

V.

In our Brief and Argument heretofore filed we insisted that the petitioner was entitled to maintain the permanent injunction decreed, not only by reason of its rights under the provisions of the Sherman Anti-Trust laws and the common law, but also because of the statutes of the State of Illinois and the decisions of the Illinois Supreme Court which established fully the petitioner's rights in the premises **and that the statutes and rule**

in Illinois should prevail. The statutes of Illinois applicable to the case and upon which the petitioner relies are Sections 46, Ch. 38 of the Criminal Code which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * business or employment or property of another * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000 or both."

and Sections 158, 159 and 160, Chapter 38, Criminal Code, reading as follows:

> "158: If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."
>
> "159: If any person shall, by threat, intimidation or unlawful interference, seek to prevent any other person from working or from obtaining work at any lawful business, on any terms that he may see fit, such person so offending shall be fined not exceeding $200."
>
> "160: Whoever enters a coal bank, mine, shaft, manufactory, building or premises of another, with the intent to commit an injury thereto, or by means of threat, intimidation or riotous or other unlawful doings, to cause any

person employed therein to leave his employment, shall be fined not exceeding $500. or confined in the county jail not exceeding six months, or both."

The decisions of the Supreme Court of Illinois relied upon are principally:

Doremus v. **Hennessey,** 176 Ill. 608.
O'Brien v. **People,** 216 Ill.
Purington v. **Hinchcliff,** 219 Ill. 159.
Franklin Union v. **People,** 220 Ill. 355.
Barnes v. **Typographical Union,** 232 Ill. 425.

These decisions were dealt with in our Brief and Argument on file. On page 32 there is a quotation stated to be from the case of **Doremus** v. **Hennessey,** *supra.* This is an error. The quotation should be in part from the case of **O'Brien** v. **People,** 216 Ill., p. 371, as follows:

"The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any attempt to compel an individual, firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees is not only unlawful and actionable, but is an interference with the exercise of the highest civil right. Thus we said in **Doremus** v. **Hennessey,** 176 Ill. 608, on page 614: 'The common law seeks to protect every person against the wrongful acts of others, whether committed alone or by combination, and an action may be had for injuries done which cause another loss in the enjoyment of any right or privilege of property. No persons, individually or by combina-

tion, have the right to directly or indirectly interfere or disturb another in his lawful business or occupation, or to threaten to do so, for the sake of compelling him to do some act which, in his judgment, his own interest does not require. * * * It is clear that it is unlawful and actionable for one man from unlawful motives to interfere with another's trade by fraud, misrepresentation, or by molesting his customers, or those who would be customers, or by preventing others from working for him or causing them to leave his employ by fraud or misrepresentation, or physical or moral intimidation, or persuasion, with an intent to inflict an injury which causes loss. * * * Every man has a right, under the law, as between himself and others, to full freedom in disposing of his own labor or capital according to his own will, and anyone who invades that right without lawful cause or justification commits a legal wrong, and, if followed by an injury caused in consequence thereof, the one whose right is thus invaded has a legal ground of action for such wrong."

Another part of the quotation erroneously stated to be from **Doremus** v. **Hennessey,** *supra,* appearing on page 33 of our brief is found in the case of **Purington** v. **Hinchcliff,** *supra,* and appears on pages 166 and 167 as follows:

"The question of unlawful conspiracy to injure the business of another, and the necessary elements to constitute it, has been before this court on other occasions. Our reports contain many well considered cases on the subject. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any loss wilfully caused by such interference will give the party injured a right of action for all damages sustained. All parties to a conspiracy to ruin the business of another because of his refusal to do some act

> against his will or judgment are liable for all overt acts illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not."

Counsel for the respondents heretofore cited in opposition to our contention **Kemp v. Division No. 241 Assn.,** 255 Ill. 213, as follows:

A reading of the majority opinions in that case will demonstrate that the case did not nor was it intended to modify Barnes *v.* Typographical Union, *supra;* also that it does not bear upon the questions involved here. The purpose of the bill in that case as stated by the Court there, was as follows:

> "The only reasonable conclusion to be deduced from the allegations and prayer of the bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment **in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men** who, after receiving benefits through their organization refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees **in accordance with the vote previously taken by the union employees as members of the union,** where the purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work." (Italics ours.)

The Court will note that the question of whether or not there should be a strike was submitted to and voted upon by the employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company **was upon the express authority conferred by the vote of the employees.**

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without authority or request of the employees.

The Court in **Kemp v. Division No. 241 Assn.,** *supra,* further says:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. **If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.** If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer." (Italics ours.)

No case is cited by respondent to sustain the conduct of respondents, without the request of the employees of petitioner and admittedly not representing them, through a self-appointed committee demanding from the petitioner a change

in the wages, which at the time as shown by the record were satisfactory to both the petitioner and its employees.

The undisputed evidence is that the Tri-City Central Trades Council and not the employees of petitioner declared a strike against the petitioner. That the employees made no complaint of their wages or working conditions. That the relations between the petitioner and its employees were in perfect amity and accord. That the Tri-City Trades Council demanded from petitioner a change in the scale of wages, and upon refusal to deal with its committee, declared a strike against the petitioner. There is no evidence in the record to justify the argument or contention that any employees of the petitioner made complaint to either the Tri-City Trades Council or to any union affiliated therewith. The evidence, so far as the record discloses, is to the contrary.

The employees of the petitioner did not strike nor cause any strike. A circular appearing on page 30 of the record states who called the strike; it reads as follows:

> "UNION MEN AND ALL LABOR STAY AWAY FROM THE AMERICAN STEEL FOUNDRY, GRANITE CITY, ILL.; ALL TRADES ARE ON STRIKE
>
> For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.
>
> By Order of Ways and Means
> COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL,
> Endorsed by Tri-City Trades Council."

Even the two men who quit the employ of petitioner as a result of the strike called by the Tri-City Trades Council had no relation to or connection with the strike, and as disclosed by the record, knew nothing of it until after the strike had been launched. Each testified that they quit work because a strike was on.

In that connection note the facts in Kemp *v.* Division No. 21 Assn., *supra*, cited by respondents:

> "The threat made by the committee that the members of the union would call a strike of the employees of the Railways Company unless their demands were complied with, meant no more than that the union employees would be notified to quit work in a body at a definite time if the non-union employees were retained in the service. **This section of the committee, if not then authorized, was ratified by an almost unanimous vote of the union employees. The union employees thereby authorized and instructed the union, its officers and members, to call the strike which it is sought by this proceeding to prevent. The contemplated action of the union employees is not the result of the dictation of any officer or officers of the union or of any person not interested in the employment, but is the voluntary action of the union employees of the Railway Company.**" (Emphasis ours.)

In the case at bar the very reverse state of affairs existed. The employees did not authorize the Tri-City Trades Council or its self-appointed committee to act for them, and did not ratify their action, but on the contrary were ignorant of the Trades Council's activities, and with the exception of two men, Churchill and Cook, refused to leave the employ of the petitioner, and in consequence were subjected to indignities, intimidation, terrorism and assault.

The decision in **Kemp v. Division, etc.,** *supra,* in no way modified the ruling as theretofore expressed in that Court and on its facts is entirely inapplicable to the instant case.

VI.

Can the Clayton Act nullify the statutes of Illinois and vitiate the decisions of the Illinois Supreme Court with reference to the petitioner's rights for the protection of its property and its property rights as established by the statutes of Illinois and by the decisions of the Supreme Court?

We said at page 42 of our Brief and Argument heretofore filed:

> "On the bill of complaint in the case at bar an injunction was granted to protect the petitioner in its property and its right of property, amongst which is the contractual relationship between itself and its employees; its right to the lawful pursuit of its business and property, free from annoyance, interference and destruction, as was its rights under Sections 46 and 158 of Chapter 38 of the Criminal Code of the State of Illinois and under the decisions of the Illinois Supreme Court."

Counsel for the respondents insisted that petitioner having sought its relief in the Federal Court the case must be decided by the Federal Court without regard to the statutes and decisions of Illinois. This we contested in our brief and argument already filed herein and we still contest. We cited and again cite in support of our position, the case of **Burgess v. Seligman,** 107 U. S., 20. This Court said in that case at p. 33 as follows:

"Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. **This is especially true with regard to the law of real estate, and the construction of state constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.** But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, **or when there has been no decision of the state tribunals,** the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State Courts."

The rule there announced still holds. It has never been even modified in any subsequent decisions.

The Supreme Court of Illinois has in an unbroken line of decisions given interpretation and construction to the statutes of the State of Illinois upon which petitioner relies, and had also established a rule for that state with reference to the right of protection by injunction of property and property rights against acts and conduct and proceedings as exist in the case at bar and constituting under these decisions an unlawful attack upon and invasion of petitioner's property and rights of property. Congress had not spoken on this subject until after petitioner secured its final judgment and decree. The act of Congress under which respondents claim relief, namely the Clayton Act, did not become law until October 15, 1914, (and which we believe we have satisfactorily shown in no way is applicable to or can affect this case). The final judgment and decree of the petitioner in this case was entered June 9, 1914. The statutes under which the petitioner claims protection were enacted and became law in the years 1863 and 1887 respectively. The decisions of the Illinois Supreme Court under which petitioner claims its right to maintain the permanent injunction granted by the District Court were made as early as 1898.

The Federal courts have not prior to the filing of the bill of complaint herein made any ruling or decision on the subject matter of the controversy presented herein nor as we contend since made any decision contrary to the rule in Illinois upon a similar state of facts, and under the case of **Burgess v. Seligman,** *supra,* the statutes of Illinois under which the petitioner claims and as construed and interpreted by the Illinois Supreme Court and the decisions of the Illinois Supreme

Court upon which petitioner relies should prevail in determining its rights herein.

The ruling announced in **Burgess v. Seligman,** *supra,* has been followed in **Butcher v. Cheshire R. Co.,** 125 U. S. 555; **Gormley v. Clark,** 134 U. S. 338.

VII.

We do not submit this supplemental brief in substitution of the brief and argument heretofore filed but merely supplemental thereto, and especially with the view to meet any claim or contention that the Clayton Act can or should in any way affect the right of the petitioner to retain the permanent injunction granted to it and in the manner and form decreed by the District Court.

This proceeding was not to restrain the organization of a union. It is not to restrain any employee from abandoning his employment. Neither the right of any laboror or any number of laborers to quit work was challenged nor the right of any employee of the petitioner to strike and abandon his work is denied. The scope and purpose of the bill filed herein was to restrain an unlawful combination and conspiracy of and amongst the respondents, none of whom were employees of the petitioner, nor representatives of the petitioner's employees, nor authorized to speak or act for them either in advance or by subsequent ratification, from interfering with the petitioner in the operation of its plant or with the employees and their right to work for the petitioner and discharge their contract obligations to it. The bill here was leveled against an unlawful and arbitrary "strike" on petitioner's plant by The Tri-

City Central Trades Council, a stranger to the petitioner and to its employees, to enjoin its lawless, wanton and brutal attacks and its assaults upon the plant, its assaults upon petitioner's employees and its interference with petitioner's business, and the injury to and threatened destruction of petitioner's property; its attempt to force petitioner's employees to violate their contract of employment by abandoning their places and depriving petitioner of its lawful right to use its property and pursue its business in due course. Respondents undertook by "strike" and by violence and by other forms of lawlessness to close down the plant of petitioner unless its demand, the demand of a stranger having no right to strike and interfere, was complied with.

The facts in this case disclose a horrible condition of lawlessness. The resorting of respondents to violence, to assault, to intimidation and unrestrained brutality is proved peradventure. If the violence and lawlessness thus exerted were not sufficient to bring petitioner to its knees and comply with the unwarranted and gratuitous demands of respondents, they would, if need be, carry out their wicked conspiracy, resort to the torch and burn down petitioner's plant.

Respondents claim the right to do picketing and persuasion of a peaceful character. But did the respondents regard their assaults and their violence and their brutality and their use of the bludgeon as forms of peaceful picketing and peaceful persuasion? Will this court assume the respondents caught red-handed in their lawless, violent and criminal expression of peaceful picketing and peaceful persuasion would change their method in that regard if the injunction is modified?

We respectfully submit that under the facts as disclosed in the record the injunction as granted by the District Court should be sustained and no modification thereof should be allowed which can only result in renewed acts of lawlessness and violence.

Can the outrages of the respondents be resumed under the authority of the Clayton Act? Can the Clayton Act be availed of to condone the unlawful interference with petitioner's property and property rights? Can the Clayton Act be used to continue the unlawful conduct and lawless practices of the respondents? We believe this Court will hold it cannot.

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
Solr's for Petitioner.

MAX PAM,
Of Counsel.

The supplemental brief on behalf of the respondents was only received after this brief was in the hands of the printer. It was therefore impossible to prepare and print a reply thereto in time for filing before the case is reached on call for oral argument.

In the very limited time permitted for examination of respondent's supplementary brief, we note that references to the record in quoting evidence are in each instance incorrect. Evidently counsel had before him a copy of the abstract of record filed in the Circuit Court of Appeals and not the record filed in this Court. It will be necessary to reserve to the oral argument reference to these quotations from the evidence.

An examination of all the authorities referred to and quoted from in respondents' supplementary brief is at the moment impossible. We have, however, examined a few of the cases cited and are safe in saying that none of those examined by us is in contradiction of the principles or propositions of law, contended for by us or in neutralization of the authorities presented by us in support thereof. Under the circumstances we would need also to reserve further observation as to the authorities cited by counsel in his supplementary brief, to the oral argument.

39

REFERENCE TO ERRORS AND OMISSIONS IN THE QUOTATIONS FROM THE EVIDENCE APPEARING IN THE SUPPLEMENTARY BRIEF OF COUNSEL FOR RESPONDENTS.

At pages 18 and 19, counsel quotes from the testimony of Galloway, President of the Tri-City Central Trades Council. It is at pages 54 and 55 of the record instead of pages 43 and 44 that the testimony appears.

Without the use of asterisks he omitted the following in the paragraph from which he quoted after: "As Chairman I went in to see Mr. Walcher and stated the case to him",
the following:

> "He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions; he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back."

He also omitted from the same paragraph the following after: "It was reported back to the joint board and a strike was declared on the plant",
the following:

> "Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts I believe."

Counsel further quotes from the testimony of Galloway which appears at page 57 of the record instead of page 45, but omits the following in the same paragraph:

> "On the seven or eight occasions I was down there **I went down to see how things were going and went down to see that things were going right.** These pickets were stationed adjacent to Neidringhaus Avenue around the depot. That is one of the main streets leading from the plant.
>
> "I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there. We circulated some bills (witness handed Exhibit "B") that is a representation of the seal of the Tri-City Central Trades Council. This is one of the bills that was circulated that I referred to."

Counsel quotes from the testimony of Cavanaugh, Secretary of the Tri-City Central Trades Council, page 19 of his brief, appearing at page 72 of the record instead of page 57. He omits the following referring to the Council: "They called a strike in this case".

Following immediately after the sentence: "We had complaints from the men themselves working at the foundry" appearing on the same pages he also omits the following from the same paragraph:

> "I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

On page 20 of the brief Counsel quotes from the testimony of Walcher stated to be page 41, but being in the record at page 51. He quotes from a paragraph the following:

> "We ran the plant without any trouble with our men up until the morning of the 23rd of April."

He then omits the following from the same paragraph without the use of asterisks:

> "From the 24th of April on until the issuance of the restraining order the defendants were almost unbearable toward our employees; it reached the point where they were in fear of entering and leaving the works."

He also omits the following from the same paragraph without the use of asterisks:

> "Since the restraining order was issued every thing has been very peaceable and quiet and haven't had any trouble our men entering and leaving the work; it would have been impossible for us to continue to operate the plant had this restraining order not been issued."

He also omits immediately following the paragraphs quoted the following testimony of Mr. Walcher:

> "Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from anyone in our employ."

Counsel also quotes from the testimony of Holmes witness for respondents which appears at page 68 of the record instead of 53, as follows:

> "I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

Immediately following this he omits the following sentence in the same paragraph:

> "I don't know what the reduction was I didn't go back to find out."

He also omits the following from the testimony of the same witness on cross-examination on page 69 of the record:

> "I made application for work when the plant opened in April. I didn't get the work."

Counsel quotes from the cross-examination of Fortner, witness for petitioner appearing at page 53 of the record instead of page 42. He used the expression "and was not molested" in his brief while the record shows the expression used by the witness was "nobody assaulted me" and counsel omits what immediately followed in the same paragraph:

> "It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better not work there. I quit on the 25th. After that time I got reports to the effect that they said if I started working again they would knock my head off. That came from an outsider."

Why should counsel substitute "was not molested" for "nobody assaulted me"? The inquiry answers itself.

Counsel also, on pages 31 and 32 of his brief, quotes from the testimony of various witnesses for the petitioner to neutralize the evidence on the subject of violence and the use of force. The record is so full of indisputable evidence and proof of violence, assaults, and thuggery that it is unnecessary to comment on conusel's quotations in that regard. We are only surprised he should for one moment think that his garbled quotations from the testimony of the witnesses would escape refutation by the record itself.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 142, 243, 132

AMERICAN STEEL FOUNDRIES, PETITIONER,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.,
RESPONDENTS.

REPLY FOR PETITIONER.

Respondent's "Statement, Brief, and Argument" was not brought to the attention of petitioner or its counsel until the case was on, the day called for argument. It will be impossible, in the limited time, to respond to the various points made by respondents or to examine and comment upon the various authorities cited or herein discuss the propositions of law submitted. A hasty reading of respondent's argument, however, compels calling attention to the many repeated variances, inaccuracies, and misquotations of the evidence in the case, and petitioner will in the main address itself in reply to a correction of the more important "errors" and "variances" in that regard.

I.

Heretofore it was not claimed by respondents that the Tri-City Central Trades Council (hereinafter referred to as Trades Council) or any other of the respondents represented or claimed authority to act for the employees of petitioner in making its demands upon petitioner or in calling the "strike." Since attention was called in the petition for rehearing filed in the Circuit Court of Appeals and in the petition for writ of certiorari herein, respondents have sought to spell out of the record evidence in that respect. The petitioner in its brief called attention to the testimony of every witness in the case on that subject, and demonstrated that the record was bare of evidence to justify the statement of the Circuit Court of Appeals that "many of the plaintiff's employees at the time of the strike were members of the defendant's organization, or Tri-City Central Trades Council."

Counsel for respondents, appreciating the importance of this fact, states evidence in the form of quotation quite unsustained and unjustified by the record. He states, page 27 of his brief, "Complaint has been made in the case at bar that such Council had no authority to protest against the reduction of the scale, even though the superintendent himself testified that 'probably 80 or 90 per cent of those employed on the day the strike was ordered were members of various locals affiliated with such Trades Council' (AR. 41)." Walcher was the petitioner's superintendent. The only testimony given by him on this subject appears under cross-examination at page 41, as follows: "When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened, April 6, we employed whoever we saw fit; whoever *employed* for employment at the gate. Started the plant the same as a new plant. We only had called for, in round numbers, 300 men, and laid off approximately 300 men. **80 or 90 per cent of the employees were old men.**

I assume these men were members of various organizations; I can't state definitely as to that." The court will not find in the testimony of Mr. Walcher, as it appears on page 41 of the record, "probably," or "of those employed," or "on the day the strike was ordered," or "locals affiliated with such Trades Council," and all contained in respondents' quotation of this evidence. Did counsel believe that this misquotation would escape attention?

Counsel states, on page 38, "In the case at bar the Tri-City Central Trades Council represented the employees other than the strike-breakers. Walcher, the superintendent, testified that probably 80 or 90 per cent were members of locals affiliated with the Tri-City Central Trades Council (AB. 41)." As before stated, this statement utterly and affirmatively differs from the evidence as it appears on page 41 of the record. Counsel further states, on page 38, "According to the testimony of the president and secretary of the Central Trades Council, such organization acted for and on behalf of employees in such mill. Galloway testified, 'After the Council received complaints about reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting, and they brought their complaint jointly before the central body and asked for its co-operation' (AB. 41)". His testimony agrees with that of Superintendent Walcher, who said: "Eighty or 90 per cent of the 350 men employed when the strike took place were members of different locals affiliated with the Central Trades Council (AB. 41)." In the same connection counsel for respondent says:

> "Cavanaugh, the secretary, testified that, at a meeting held on April 15, a communication was received requesting that a special meeting be called of all trades working at the American Steel Foundries, to arrange some plan to have the wages reinstated, and a meeting was called for the 19th. At such meeting 10 or 12 trades were represented."

He does not state from whom the communication was received, leaving it to be inferred that the communication might have been from the employees of the petitioner. The witness stated, at page 57, that the communication was received from the Machinists' Union—not from the employees of the petitioner. The testimony of Superintendent Walcher is again misquoted, and through the form of misstatement it is attempted to give character to the testimony of Galloway, the president, and Cavanaugh, the secretary, not justified by the record.

So far as the record shows there was but one employee of the petitioner a member of any machinist's union, and that one went out in response to the "strike" call of the Trades Council, i. e., Thomas Churchill, who testified, page 53, "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I was not completely satisfied. It was the best thing I had to take at the time being and I have not had anything better since. I did not get a better job. **I quit because these fellows asked me to go out.**" It is evident from this testimony that no machinist made any complaint or requested a meeting to be called of the trades working at the American Steel Foundries.

On page 56 counsel says, "Complaint has been made in the case at bar, that such Council had no authority to protest against the reduction of the scale—even though the superintendent himself testified that probably 80 or 90 per cent of those employed on the day the strike was ordered were members of various locals affiliated with such Trades Council (AB. 41)." On page 59, however, dealing with the same statement of the superintendent, counsel quotes Mr. Welcher as follows: "We had approximately 300 men—80 or 90 per cent of those were old men; I assume these were members of the various labor organizations" (AB. 41B). Even in this partially correct quotation counsel adds the article "the" before "various labor organizations" and inserts the word "labor" before the word "organizations." Both "the" and

"labor" were put in, though not in the testimony as shown on page 41. It must have been intended to give some form of identification or application to the "labor" organizations forming the Trades Council, which the witness did not do and did not intend to do; and counsel in the same quotation omits deliberately the further statement of the witness, "I can't state definitely as to that."

On page 67 counsel says, "In the case at bar, 'after a request from those employed in the mill for co-operation, the Executive Board selected the pickets' (AB. 44-57)." We have several times and with great care examined the record from page 44 to 57 inclusive, as well as indeed the whole record, and find nowhere any such evidence as is here quoted. What the record shows on the subject of selecting pickets appears on page 45 of the record in the cross-examination of Galloway, as follows: "A committee of the joint board of the Tri-City Central Trades Council selected these pickets; rather they were from the different crafts that were connected with the reduction in wages. The joint board placed pickets down there at the Wabash Depot along the streets leading to the plant of the American Steel Foundries and we sanctioned their action." There is nothing here of any "request from those employed in the mill for co-operation." On page 44 of the record the same witness testified "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the central body and asked for its co-operation in the matter of arbitration with the foundries." There is nothing there of any "request from those employed in the mill for co-operation." Indeed, the court will look in vain through the entire record for any such testimony or evidence.

On page 71 counsel says "Lamb testified; 'Five machinists quit work' (AB. 48)." Walcher, superintendent, testifies, record, page 41, "**Only two men left our employ in response**

to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from anyone in our employ." The two men who quit were Cook and Thomas Churchill, the only machinist who went out in response to the strike call. The evidence on page 48, from which counsel quotes, is as follows: "On the 22nd or 23rd of April, I think five of our machinists were in the plant, one by the name of Mussell, who quit of his own volition, and Tom Churchill and Hampy and Drogg; Drogg was what we called a semi-machinist." At the top of the same page under direct examination Lamb testified: "Prior to the strike some of the men in my organization were employed at the plant, we called them out after the strike had been declared. This clearly shows that the machinists working at the mill did not strike. Indeed, they were called out **after the strike had been declared,** and as contended by petitioner, were satisfied and contented and indeed, so far as the record discloses, these machinists did not respond to the strike call but remained in the employ of the petitioner, for as testified to by Walcher, the superintendent, "only two men left when the strike was called:" One was Isaac Cook and the other was the machinist Churchill.

Counsel says on the same page, 75, "Churchill testified he quit because he was a member of 'the machinists' union' (AB. 52)." Churchill did not testify to any such thing. We find the evidence of Churchill on page 52 of the record, and with reference to why he quit he says "**I quit because these fellows asked me to go out.**" Who were "these fellows?" Not the Machinists' Union. They were the Trades Council. The Machinists' Union did not call the strike. The Trades Council called the strike. That is admitted, and the handbill appearing on page 24 of the record shows the strike was called by the committee of the Trades Council.

On page 104 counsel states "Cook testified that he quit

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because of the reduction of wages." On direct examination his testimony was, "I quit because they cut my wages." On cross-examination Cook says: "I did not quit as soon as I got my pay but worked four or five days longer and **I quit because they said there was a strike on.** I just felt as it was right for me to come out." Why counsel in this manner misstated the testimony of Cook must be apparent.

On page 107 counsel, again stating the testimony of Walcher, the superintendent, makes this amazing misquotation: "Eighty or 90 per cent of the 1,600 men were members of the various locals affiliated with the Central Trades Council when the plant closed down," and proceeds to state "Then a like per cent of the 350 employed when it opened up were likewise members of the various locals represented by the said Central Trades Council" (AB. 41). And he further says: "According to the testimony of the president and secretary of the said Council those employees affected by the reduction made the complaint, and asked the co-operation of such Council (AB. 44-57)." The testimony of Walcher on this point the Court will find at page 41 of the record.

We have carefully followed counsel for respondents in his presentation of the evidence (?) and feel safe in saying that even the erroneous and insupportable misquotations do not sustain the contention that employees of the petitioner at any time were members of or were represented by the Trades Council in calling the strike at the petitioner's plant and in seeking to coerce the petitioner into a change of wages and conditions then satisfactory to the employees.

II.

It is rather interesting to note counsel's vehement assertion of the peacefulness and virtue of the Trades Council and its officers. His defense of the lawfulness of this "model" organization and denunciation of the lawlessness of

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the I. W. W. organization, in the light of the evidence, are at least amusing. At first there is a substantial denial of any violence or even disturbance except perhaps by some poor unnamed immigrants who, escaping from the oppression of their homeland, are excused for any violence towards the employees of petitioner by the fact that they could not indulge in the "sport" of slugging in their former country. Later we find considerable discussion in which the testimony of the various witnesses as to the violence and assaults is dealt with from the viewpoint of contention that the efforts in that direction were the wrongs of the individuals and not of the Trades Council; and it is attempted to exculpate the Trades Council and its officers by the statement, page 57, "The Central Trades did not instruct anybody to assault these parties, these strike-breakers or anybody. These pickets were not authorized to commit an unlawful act. That was not the intention of the Central Trades Council. That is not the way the Council carries on its business."

What becomes of the testimony and counsel's quotation of the testimony, appearing on the same page 57, "A committee of the joint board of the Tri-City Central Trades Council selected the pickets?" Who did the slugging? Strangers? Who pursued the employees of the petitioner? Were they strangers or were they pickets? The respondents in testifying admitted that they were the pickets of the Trades Council. These same respondents it was shown by the evidence committed the assaults.

And what about Galloway, the president, concerning whom Wm. Francis testified, page 33 of the record, That fellow there (pointing to Galloway) threw a brick and hit his man in the ear." "I have known Galloway five or six months. I am sure Galloway was there. I am sure I saw him. I saw Galloway throw a brick. He threw it at that fellow there, sir;" and who (Galloway) testified, page 45 of the record, "On the seven or eight occasions I was down

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there I went down to see how things were going and went down **to see that things were going right.** These pickets were stationed adjacent to Neidringhaus Avenue around the depot. That is one of the main streets leading from the plant."

And how about Mr. Lamb of the Union National Association of Machinists of St. Louis, who had a local at Granite City affiliated with the Trades Council, concerning whom Oscar E. Hall testified, page 39, as follows: "About the 24th or 25th of April I had a conversation with the defendant Lamb, who said to me, '**We did not like the way you have treated our boys down here and we just come down to raise a little hell.**' Just before he said this he was with a party of five or six men."

What about the undisputed fact that before the Trades Council called a strike at petitioner's plant all was quiet, peaceful, and contented, no disturbance and no complaint. That immediately after the strike was called and the men selected by the Trades Council as pickets proceeded to operate in that capacity, intimidation, assault, brutality, slugging, and riot ensued; and then immediately upon the service of the restraining order issued by the District Court all was again peaceful and quiet and undisurbed.

Who caused the violence? Who caused the assaults? Who practiced the terrorism and brutality? Who threw the bricks and used the bludgeon? The Trades Council and the pickets selected by it to carry out its infamous and illegal conspiracy to force petitioner to change the wages of its employees when the employees themselves asked no change and were entirely satisfied; to assault, intimidate, and slug the employees of the petitioner unless they struck and left the employ of the petitioner and violated their contracts of employment; and to shut down the plant and disrupt the business of the petitioner in order to carry out its illegal conspiracy.

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III.

As counsel for respondent proceeds with his argument and presentation he gets bolder and bolder, until we find him saying, page 79, "We will admit that when certain trades affected by a reduction of wages reported the matter to Tri-City Central Trades Council and requested action that such Council did take action, first, by appointment of a committee to arbitrate the wage question, and when the representative of the company refused the proposition there was nothing left for the Tri-City Trades Council to do but issue the strike order." The arrogance of this organization is expressed in its lawless conduct. It does not matter, apparently, that the employees of the petitioner were satisfied; that they were contented; that they asked no change in wages and no change in conditions; that they were living in amity, in concord, and in happiness with their employer, the petitioner.

If, forsooth, some barber wanted to get five cents more for a shave from the employee of the petitioner, or some baker wanted to charge such employee more for his bread, or some bartender or saloon keeper sought to get a larger price for his beer or whiskey, or some carpenter, painter, plumber, plasterer, lather, moulder, electrician, or clerk in some store or any other of the "trades" affiliated with the Trades Council desired to charge employees a higher price for the things the employee used and desired, in order to secure such enhancement in price the Trades Council could be requested to force the employer to pay the employees higher wages so that these various trades could exact higher prices, and if the employer refused the request of a committee from the Trades Council, then, as we understand counsel, the Trades Council had the right to demand an increase in wages or an arbitration and if the employer, having no request or complaint from the employees, declined to treat with such a committee, the Tri-City Central Trades

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Council had the right to "strike" the employer's plant, intimidate and assault the employees, and if necessary shut down the plant; and this is claimed by counsel as a legitimate pursuit of this organization and is a lawful undertaking which may not be enjoined, as was decreed by the District Court.

Counsel goes further and says, page 97, "But the 37 labor unions connected with the Tri-City Central Trades Council, are composed of a law-abiding citizenship, and have no use for either the I. W. W.'s or Emma Goldmans. **They do insist, however, that they have the right to band together and as an organization make any resonable demand upon the employer. And the right to enforce such demand by peaceful picketing and other lawful means.**" As applied to the evidence and the facts in this record this insistence and assertion of counsel for respondents makes one gasp.

Our astonishment at the boldness of respondent is only equaled or exceeded by the scandalous statements appearing on pages 76 and 77 and 94 and 95 of the brief and argument for respondents. The subject-matter there contained is offensive and is indefensible and should be stricken out as scandalous.

Respectfully submitted,

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